

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATE: December 13, 2006

**SUBJECT MATTER OF
PROPOSED REGULATIONS:** Public Information Disclosure Policy

SECTION AFFECTED: § 3303.1 of Article 1, Chapter 1, Division 33, Title 16, of the California Code of Regulations

UPDATED INFORMATION:

The Initial Statement of Reasons is included in the file. No changes have been made which would warrant a change to the information contained therein.

LOCAL MANDATE:

A mandate is not imposed on local agencies or school districts.

SMALL BUSINESS IMPACT:

This action will not have any adverse economic impact on businesses, including small businesses. This determination is based on the following facts or evidence/documents/testimony:

The proposed action does not impose any requirement upon or require any action by any business.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This action does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose

for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following comments/objections/recommendations were made, either in writing or orally during the public comment period or at the public hearings, regarding the proposed action:

1. Bob Haynes, BAR Liaison, Pep Boys Automotive, in oral testimony presented at the December 13, 2006 public hearing, offered the following comments and recommendations:

I fully support the proposal – the content and the changes – in full. I feel that the consumer should have access to the subject information. I feel it promotes honest and good workman-like repair by the auto repair shops. I feel it aids the customer in making decisions regarding the shops with which they will do business.

This expression of support was accepted and considered in the adoption of the proposed action.

2. Marty Keller, Executive Director, California Automotive Business Coalition, in a letter dated and received by facsimile transmission, August 30, 2006, offered the following comments and recommendations regarding the modified language:

The proposed language regarding disclosure of complaint information fails to inform the public about whether the Bureau investigated a complaint and found it to have merit. This could result in any and every complaint against an ARD being disclosed, whether the complaints were meritorious or not. The failure to disclose only those complaints determined to be valid could result in the ARD losing business even though it had done nothing that would have caused a consumer to lose faith or trust in it.

The Bureau claims in its “Informative Digest/Policy Statement Overview” that it is proposing this amendment “to provide registrant and licensee information to consumers consistent with the minimum standards recommended by DCA.” The failure to provide the distinction between meritorious and non-meritorious complaints, and between open and closed complaints, is not consistent with DCA policy.

DCA’s policy on minimum standards for complaint disclosure recommends that information about a complaint shall not be disclosed if it is determined that, among other things, the complaint is without merit. The policy also suggests that the conditions under which disclosure may be made should include, among other things, that the business has been provided an opportunity to respond to the complaint. The Bureau’s draft language does not include either of these provisions.

We ask the Bureau to amend its proposed language to reflect the Department policy as delineated above and thereby protect innocent businesses from potential financial harm. Unless it does so, we must strongly oppose the regulatory action.

This comment/recommendation was rejected because:

It is clear from the proposed text of subparagraph (E) of paragraph (3) of subsection (c) that only complaints that are found to be meritorious will be disclosed. Specifically, subparagraph (E) specifies that a description shall be given of the types of public information that is not included with the complaint information being disclosed and gives as an example, “unsubstantiated complaints.” It is the interpretation and intent of the Bureau that “unmeritorious complaints” would be included under the term, and considered to be, “unsubstantiated complaints.”

There is nothing in the proposed text of Section 3303.1 that states or even implies that open complaints would be disclosed. On the contrary, the conditions that must be met before a complaint will be disclosed (paragraph (1) of subsection (c)) are all conditions that result from the completion of a complaint review or investigation. A citation is not issued as a result of a complaint until the complaint is closed. Complaints are not referred to the Attorney General for administrative action until the complaint is closed. A final determination as to whether or not a complaint “has a direct and immediate relationship to the health and safety of another person” is not made until the complaint is closed. This is also reinforced in subparagraph (C) of paragraph (3), which provides that the disposition of each disclosable complaint will be provided. There can be no disposition until the complaint is closed. Furthermore, in almost every complaint review, mediation or investigation, the subject of the complaint (i.e., the business or individual being complained about) is informed of the nature of the complaint and given an opportunity to respond. A possible exception would be instances where disclosure of the complaint might jeopardize an investigation, in which case the complaint would not be disclosed to anyone. The Bureau does not now disclose information about open complaints, nor does it intend to under the provisions of the proposed action.

While the Bureau’s proposed regulation text does differ somewhat from DCA’s “Recommended Minimum Standards for Consumer Complaint Disclosure” as published on its Web site, it does mirror almost exactly the model regulation language DCA has provided to its constituent agencies as a part of its recommended standards. Given the foregoing responses to these comments, it should be concluded that both the model regulation language and the regulation text of this proposed action are consistent with and implement DCA’s “Recommended Minimum Standards for Consumer Complaint Disclosure.” It should also be noted that those standards are only recommendations and not mandatory directives.

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.